

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH J. PACHETTI,

Plaintiff,

14-CV-552(LJV)(JJM)
ORDER

v.

CAROLYN W. COLVIN, ACTING
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

On March 19, 2015, the Court (Hon. Richard J. Arcara) referred this case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings pursuant to 28 U.S.C. § 636(b)(1)(B). Docket Item 9. On November 24, 2015, this case was reassigned from Judge Arcara to the undersigned. Docket Item 15.

On March 18, 2015, the plaintiff moved for judgment on the pleadings. Docket Item 8. On May 22, 2015, the defendant responded to the plaintiff's motion and moved for judgment on the pleadings. Docket Item 13. And on June 15, 2015, the plaintiff filed his reply. Docket Item 14.

On August 31, 2016, Judge McCarthy issued a Report and Recommendation finding that the plaintiff's motion should "be granted to the extent that this case be remanded to the Acting Commissioner for further proceedings consistent with this Report and Recommendation" and that the defendant's motion should be denied. Docket Item 16 at 24. The parties did not object to the Report and Recommendation, and the time to do so now has expired. See 28 U.S.C. 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify, in whole or in part, the findings or recommendation of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's recommendation to which objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are addressed. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge McCarthy's Report and Recommendation as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge McCarthy's recommendation to grant the plaintiff's motion for judgment on the pleadings and to deny the defendant's motion.

As Judge McCarthy noted, the ALJ not only incorrectly discounted the treating psychiatrist's opinion but also seemingly ignored the medical record, which "is replete with objective evidence corroborating [the treating psychiatrist's] opinion." Docket Item 16 at 17-19, 21. Moreover, the ALJ did not provide a sufficient reason to discount that opinion in favor of the opinions of two other doctors—one of whom *never even saw the plaintiff*—that were both "inconsistent with the longitudinal record in this case" and based on outdated and "incomplete information." *Id.* at 20. Further, by failing either to identify inconsistencies in the plaintiff's statements or to provide other support for discrediting the plaintiff's testimony, the ALJ did not conduct a proper credibility assessment of the plaintiff. See Docket Item 16 at 24.

For those reasons and the other reasons stated in Judge McCarthy's Report and Recommendation, the plaintiff's motion for judgment on the pleadings (Docket Item 8) is GRANTED, the defendant's motion for judgment on the pleadings (Docket Item 13) is DENIED, and the case is REMANDED to the Acting Commissioner for further proceedings consistent with Judge McCarthy's Report and Recommendation.

SO ORDERED.

Dated: December 29, 2016
Buffalo, New York

s/Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE